

Date: January 10, 2003

Instructions to the Jury

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform these duties fairly and impartially. You must not allow sympathy, prejudice, fear, or public opinion to influence you. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to a fair trial. The law respects all persons equally, all persons stand equal before the law, and all persons are to be dealt with as equals in a court of justice.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, stipulations, and matters of which I have taken judicial notice.

A stipulation is an agreement between the plaintiffs and the defendants that certain facts are true.

In addition, I have taken judicial notice of certain facts. You are required to accept those facts as proved.

Any notes that you have taken during this trial are only aids to your memory. If your memory differs from your notes, you should rely on your memory and not on the notes. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.”

Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;

- the witness's memory;

- the witness's intelligence;

- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;

- the witness's manner while testifying;

- the reasonableness of the witness's testimony in light of all the evidence in the case; and

- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or “impeached” by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’ testimony in court.

If you believe that any witness has been impeached, then it is up to you to decide whether to believe the witness’ testimony in whole, in part, or not at all, as well as what weight, if any, to give to the witness’ testimony.

Certain things are not evidence. I will list them for you:

First, testimony that I struck from the record, or that I told you to disregard, is not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by an objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial.

The unexplained failure of a party to produce evidence within its control may give rise to an inference that, if the evidence had been produced, it would have been unfavorable to that party's cause. However, you may not infer that such evidence would have been unfavorable unless you find by a preponderance of the evidence that the party willfully destroyed or concealed the evidence, and that the evidence was destroyed or concealed in bad faith.

The weight of the evidence is not necessarily determined by whether the evidence is in the form of a document or the oral testimony of a witness. It is for you to determine, based upon the circumstances surrounding each document and each piece of testimony, what weight to give to that evidence.

The plaintiffs in this case are Bradley Tully and Rollow Arlin.

The defendants in this case are Gary Del Re, Tom Rovetuso, and Steve Semenek.

Each of the defendants is being sued as an individual. Neither the Lake County Sheriff's Department nor Lake County are parties to this lawsuit.

Bradley Tully and Rollow Arlin have asserted four separate claims in this case. You are to consider each claim separately.

In claim 1, both Tully and Arlin allege that their constitutional right of free speech was violated by Gary Del Re, in that Del Re caused others to retaliate against Tully and Arlin for their public support of a candidate running against Del Re for the elected position of Sheriff of Lake County.

In claim 2, Arlin alleges that his constitutional right to be free from unreasonable seizure was violated by Del Re, Tom Rovetuso, and Steve Semenek, in that they caused him to be falsely arrested without probable cause.

In claim 3, Tully claims that his right under Illinois law to be free from malicious prosecution was violated by Del Re, in that Del Re caused Rovetuso and Semenek to wrongfully secure an arrest warrant for Tully and institute criminal charges against him.

In claim 4, Arlin claims that his right under Illinois law to be free from malicious prosecution was violated by Del Re, Rovetuso, and Semenek, in that they wrongfully secured an arrest warrant for Arlin and instituted criminal charges against him.

In order to find any defendant liable, you must find that the defendant was personally involved in the conduct complained of by the plaintiff. You may not hold a defendant liable for the acts or omissions of others.

A violation of a state statute, or an administrative rule, regulation or policy is not the same as a constitutional violation. However, you may consider evidence relating to statutes, rules, regulations, and policies in determining the facts and circumstances of the plaintiffs' claims.

In a civil lawsuit like this one, the burden is on each plaintiff to prove every essential element of his claim by a “preponderance of the evidence.”

A preponderance of the evidence simply means evidence that persuades you that a plaintiff’s claim is more likely true than not true.

In deciding whether any fact has been proved a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received, regardless of who may have produced them.

Claim 1

Claim 1 is made by both Tully and Arlin against Del Re. As I have stated, you must consider Tully's and Arlin's claims separately.

In order to prevail on Claim 1, the particular plaintiff must prove each of the following propositions by a preponderance of the evidence:

1. The plaintiff was exercising his constitutional right to support a candidate for public office.
2. Del Re retaliated against the plaintiff for exercising his constitutional right, or caused other persons to do so.
3. The plaintiff was harmed as a direct result of the retaliation.

If you find that a particular plaintiff has proved all of these elements by a preponderance of the evidence, then you should find in favor of that plaintiff.

If, on the other hand, you find that a particular plaintiff has failed to prove any one of these elements by a preponderance of the evidence, then you should find in favor of Del Re on that plaintiff's claim.

Claim 1 - definitions

The parties have agreed that the plaintiffs' support of Willie Smith was protected by their constitutional right of free speech.

In order to show that Del Re retaliated against a plaintiff for exercising his constitutional right of free speech, the plaintiff must prove by a preponderance of the evidence that the plaintiff's exercise of his free speech rights was a substantial or motivating factor in Del Re's actions against the plaintiff, in other words, that the plaintiff's exercise of his free speech rights was a substantial consideration that made a difference in, or influenced, Del Re's actions. The plaintiff does not have to prove that Del Re acted solely because of the plaintiff's exercise of his constitutional rights.

Claim 2

Claim 2 is made by Arlin against Del Re, Rovetuso, and Semenek. You must consider the claim separately as to each defendant.

In order to prevail on Claim 2 against a particular defendant, Arlin must prove each of the following propositions by a preponderance of the evidence as to that defendant:

1. The defendant intentionally caused a warrant to be issued for Arlin's arrest.
2. Probable cause to arrest Arlin was lacking at the time the arrest warrant was issued.
3. The defendant intentionally caused material false statements to be made to the judge who issued the arrest warrant, or intentionally failed to disclose material facts to the judge who issued the arrest warrant.
4. Arlin was arrested based on the warrant.

If you find that Arlin has proved all of these elements by a preponderance of the evidence as to a particular defendant, then you should find in favor of Arlin and against that defendant.

If, on the other hand, you find that Arlin has failed to prove any one of these elements by a preponderance of the evidence as to a particular defendant, then you should find in favor of that defendant on Arlin's claim.

Claim 2 - definitions

A person acts “intentionally” in making a false statement if he knows the statement is false at the time he makes it, or if he makes the statement in reckless disregard of whether it is true or false.

A person acts “intentionally” in omitting a material fact from an application for a warrant if he is aware of the material fact but knowingly fails to include it in the application.

False statements included in an application for a warrant are “material” if probable cause to arrest would not exist if the false statements had not been included.

A fact omitted from an application for a warrant is “material” if the application would not have established probable cause to arrest if the fact had been included.

Probable cause for an arrest exists if, at the moment the arrest warrant is issued, the facts and circumstances within the defendant’s knowledge, and of which he had reasonably trustworthy information, were sufficient to warrant a prudent person in believing that the plaintiff had committed an offense.

At all relevant times, there were Illinois statutes in force which provided as follows:

1. “It is unlawful for any person to knowingly manufacture or deliver a substance containing cocaine.”
2. “It is unlawful for any person knowingly to manufacture, distribute, advertise, or possess with intent to manufacture or distribute a look-alike substance.” A “look-alike substance” is defined in Illinois law as a substance, other than a controlled substance, which by overall appearance, taste, consistency, or other identifying physical characteristic would lead a reasonable person to believe that it is a controlled substance, or which is represented (expressly or by implication) to be a controlled substance, or which is distributed under circumstances which would lead a reasonable person to believe that it is a controlled substance.

Under Illinois criminal law, a person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with an intent to promote or facilitate the commission of the offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense, even if the other person who commits the offense is not arrested or prosecuted. However, a defendant’s presence at the scene of a crime and knowledge that a crime is being committed is not by itself sufficient to establish the defendant’s responsibility for the conduct of another.

Claim 3

Claim 3 is made by Tully against Del Re.

In order to prevail on Claim 3, Tully must prove each of the following propositions by a preponderance of the evidence:

1. Del Re caused a warrant to be issued for Tully's arrest.
2. Del Re acted maliciously in causing the warrant to be issued.
3. Probable cause to arrest Tully was lacking.
4. Tully was arrested and charged in a criminal proceeding based on the warrant.
5. The criminal charge that resulted from the arrest was terminated in Tully's favor.
6. Tully was damaged as a result of the arrest and the criminal charges.

If you find that Tully has proved all of these elements by a preponderance of the evidence, then you should find in favor of Tully.

If, on the other hand, you find that Tully has failed to prove any one of these elements by a preponderance of the evidence, then you should find in favor of Del Re.

Claim 4

Claim 4 is made by Arlin against Del Re, Rovetuso, and Semenek. You must consider the claim separately as to each defendant.

In order to prevail on Claim 4 against a particular defendant, Arlin must prove each of the following propositions by a preponderance of the evidence as to that defendant:

1. The defendant caused a warrant to be issued for Arlin's arrest.
2. The defendant acted maliciously in causing the warrant to be issued.
3. Probable cause to arrest Arlin was lacking.
4. Arlin was arrested and charged in a criminal proceeding based on the warrant.
5. The criminal charge that resulted from the arrest was terminated in Arlin's favor.
6. Arlin was damaged as a result of the arrest and the criminal charges.

If you find that Arlin has proved all of these elements by a preponderance of the evidence as to a particular defendant, then you should find in favor of Arlin and against that defendant.

If, on the other hand, you find that Arlin has failed to prove any one of these elements by a preponderance of the evidence as to a particular defendant, then you should find in favor of that defendant on Arlin's claim.

Claims 3 & 4 - definitions

A person acts “maliciously” in causing a warrant to be issued if he acted for an improper motive, that is, any reason other than to bring the party to justice. You may infer that a person acted maliciously from the absence of probable cause, if the absence of probable cause has been clearly proved and the circumstances are inconsistent with actions made in good faith.

Probable cause for an arrest exists if, at the moment the arrest warrant is issued, the facts and circumstances within the defendant’s knowledge, and of which he had reasonably trustworthy information, were sufficient to warrant a prudent person in believing that the plaintiff had committed an offense.

Damages

If you find that a particular plaintiff has proved any of his claims against any of the defendants, then you must determine what amount of damages, if any, that plaintiff is entitled to recover.

If you find that a particular plaintiff has failed to prove any of his claims, then you will have no occasion to consider the question of damages as to that particular plaintiff.

You should not interpret the fact that I am giving you instructions about damages as an indication that I believe that either plaintiff should, or should not, win this case. It is up to you to decide that question. I am instructing you about damages only so that you will have guidance in the event you find in favor of one or both of the plaintiffs on any of their claims.

There are two types of damages for you to consider in this case: compensatory damages and punitive damages.

If you find in favor of a plaintiff on a particular claim, then you must determine his compensatory damages. Compensatory damages means the amount of money that will fairly and justly compensate the plaintiff for any injury that you find he sustained and is reasonably certain to sustain in the future as a direct result of the defendant's wrongful conduct.

Each plaintiff has the burden of proving his damages by a preponderance of the evidence. Your award must be based upon evidence and not upon speculation, guesswork, or conjecture. On the other hand, compensatory damages are not restricted to actual loss of money; they cover both the physical and mental aspects of injury, both tangible and intangible.

You should consider the following elements of compensatory damages, and no others:

1. Loss of the value of the plaintiff's business.
2. The mental or emotional pain and suffering that the plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of mental or emotional pain and suffering has been or needs to be introduced. There is no exact standard for fixing the damages to be awarded on account of pain and suffering.

You are to determine an amount that will fairly compensate the plaintiff for the injury he has suffered.

If you find in favor of a plaintiff but find that the plaintiff has failed to prove compensatory damages, you must return a verdict for the plaintiff in the amount of one dollar (\$1.00).

If you find for a plaintiff, you may, but are not required to, assess punitive damages against any defendant that you have found liable to that plaintiff. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to the defendant and others not to engage in similar conduct in the future.

The plaintiff has the burden of proving by a preponderance of the evidence that punitive damages should be assessed against the defendant. You may assess punitive damages against a defendant only if you find that particular defendant's conduct was malicious or in reckless disregard of the plaintiff's rights. Conduct is malicious for purposes of punitive damages if it is accompanied by ill will or spite, or is done for the purpose of injuring the plaintiff. Conduct is in reckless disregard of the plaintiff's rights if, under the circumstances, it reflects complete indifference to the safety or rights of the plaintiff.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes of punitive damages that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages that you decide to award against a particular defendant, you should consider the following factors:

- the nature and degree of reprehensibility of the defendant's conduct;
- the impact of the defendant's conduct on the plaintiff;
- the relationship between the plaintiff and the defendant;
- the likelihood that the defendant would repeat the conduct if an award of punitive damages is not made;

- the relationship of any award of punitive damages to the amount of actual harm inflicted on the plaintiff.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

A form of verdict has been prepared for you. Take the form to the jury room, and when you have reached unanimous agreement on the verdicts, your foreperson will fill in and date the form and each of you will sign it.

The verdicts must represent the considered judgment of each juror. Your verdicts must be unanimous.

You should make every reasonable effort to reach a verdict on each claim. In doing so, you should consult with one another, express your own views, and listen to the view of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict as to each claim that is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

Source: Agreed Instruction No. 22

VERDICT FORM

We, the jury, find as follows on the claims of the plaintiffs, Bradley Tully and Rollow Arlin:

	(check only one on each line)	
	<u>For plaintiff</u>	<u>For defendant</u>
Claim 1 - Tully vs. Del Re:	_____	_____
Arlin vs. Del Re:	_____	_____
Claim 2 - Arlin vs. Del Re:	_____	_____
Arlin vs. Rovetuso:	_____	_____
Arlin vs. Semenек:	_____	_____
Claim 3 - Tully vs. Del Re:	_____	_____
Claim 4 - Arlin vs. Del Re:	_____	_____
Arlin vs. Rovetuso:	_____	_____
Arlin vs. Semenек:	_____	_____

Damages as to plaintiff Tully: (to be considered only if you found in Tully's favor
on one or more of his claims)

Compensatory damages: _____

Punitive damages - Del Re: _____

Damages as to plaintiff Arlin: (to be considered only if you found in Arlin's favor
on one or more of his claims)

Compensatory damages: _____

Punitive damages - Del Re: _____

Punitive damages - Rovetuso: _____

Punitive damages - Semenек: _____

Foreperson

Date: _____, 2003